

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

CURTIS L. BARBER,

Petitioner,

vs.

TIM BRUNSMAN, WARDEN,  
LEBANON CORRECTIONAL INSTITUTION,

Respondent.

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Case No. 3:08cv105

JUDGE WALTER HERBERT RICE

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DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE JUDGE (DOC. #3) AND  
OVERRULING PETITIONER'S OBJECTIONS (DOC. #5) TO SAID  
JUDICIAL FILING; PETITION FOR WRIT OF HABEAS CORPUS DENIED;  
JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST  
PETITIONER; ANTICIPATED REQUEST FOR CERTIFICATE OF  
APPEALABILITY AND REQUEST FOR LEAVE TO APPEAL *IN FORMA*  
*PAUPERIS* DENIED; TERMINATION ENTRY

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Based upon the reasoning and citations of authority set forth in the Report and Recommendations of the United States Magistrate Judge (Doc. #3), as well as upon a thorough *de novo* review of this Court's file and the applicable law, said Report and Recommendations are adopted in their entirety. Petitioner's Objections to said judicial filing (Doc. #5) are overruled. The Petition for Writ of Habeas Corpus is denied, and judgment is ordered to be entered in favor of Respondent and against Petitioner herein.

In ruling as aforesaid, this Court makes the following, non-exclusive, observations:

1. This Court agrees that the Petitioner's Petition raises non-cognizable state law claims and, moreover, that his federal claims are based upon non-retroactive Supreme Court decisions. While the Supreme Court decisions in question are applicable to cases on direct review, they are not applicable to cases pending on collateral review, such as Petitioner's.

This Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, in that reasonable jurists could not debate whether the Petition herein should have been resolved in a different fashion or that the issues presented were adequate to deserve encouragement to proceed further. Accordingly, Petitioner is denied a Certificate of Appealability. Further, given that any appeal from this Court's decision would be objectively frivolous, this Court denies any anticipated request for leave to appeal *in forma pauperis*.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

July 15, 2008

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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

Curtis Barber, *Pro Se*

Ohio Attorney General